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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,417	12/08/2004	Doris Reich	3152	2640
<div>7590      09/13/2007</div> <div>Striker Striker &amp; Stenby 103 East Neck Road Huntington, NY 11743</div>				
			<div>EXAMINER</div> <div>RACHUBA, MAURINA T</div>	
			<div>ART UNIT</div> <div>3723</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>09/13/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/517,417	Applicant(s) REICH ET AL.	
	Examiner Maurina Rachuba	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
- 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03 January 2007 has been entered.

### ***Response to Amendment***

2. The affidavit filed on 05 October 2006, with further evidence provided on 03 January 2007, under 37 CFR 1.131 has been considered and is effective in overcoming the 6,514,131 reference.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 29 06 123. Please refer to figure 10 and to the English language synopsis, included herewith. '123, figure 10, discloses the claimed invention, including a dust-collecting receptacle for an electric hand machine tool, having a dust-collecting chamber **158**, having an inlet fitting **150** that has a connecting opening to be fitted onto a dust

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output fitting of the machine and a mouth (the top of baffle **152**) oriented toward the dust-collecting chamber, the chamber having an exhaust opening **154**, and having a dust filter **144** situated between the dust-collecting chamber and the exhaust opening, wherein the inlet fitting extends in the lower region of the dust-collecting chamber and the dust filter and exhaust opening are situated one above the other on top of the dust-collecting chamber; the mouth (the top of baffle **152**) of the inlet fitting is situated close to the rear delimiting wall of the dust-collecting chamber at the end oriented away from the connecting opening of the inlet fitting; the dust-collecting chamber extends beyond the connecting fitting of the inlet fitting; chamber is enclosed by a box-shaped housing that is open at the top and a cover **146** that closes the housing, the inlet fitting is integrated into the housing bottom, and the exhaust opening is situated in the cover; the dust filter is attached to the underside of the cover; the housing with the cover is **adapted** to the outer contours of the machine, in that the machine may take any shape, including rectangular, and the housing with cover would adapt to that shape. Note that the filter is held to the cover by adhesive. While weight is give to the limitation "preferably by ultrasonic welding", it is noted that such limitation is a form of adhesion, and without further defining structure, '123 can be interpreted to read on claim 9. The same applies to the limitation "preferably an electric hand grinder", as there are no limitations that would limit the use of the filter housing exclusively to this type of tool.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 29 06 123 in view of Rick et al, 5,925,172. '123 discloses that the exhaust opening extends partially over the cover and is formed of openings. '172, figure 3, teaches the use of a louvered grating extending over the entire cover of the filter housing exhaust opening. It would have been obvious to one of ordinary skill to have provided '123 with the louvered grating exhaust opening over the entire cover as taught by '172, column 6, lines 15-24, to allow maximum air flow and to direct the flow of air. Further, '123 does not disclose an elastic edge extending around the outside which rests against the housing and has an air-sealing function. '172 teaches that it is old and well known to provide an elastic edge 128 to a filter housing to provide an air-sealing function. It would have been obvious to one of ordinary skill to have provided '123 with the seal of '172 to ensure that particulates do not escape from the container, see column 6, lines 1-

7. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being obvious over DE 02-06 123 in view of Reich et al, 6,641,634.

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR

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1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2). '123 does not disclose the housing provided with locking hooks, or that an end wall of the housing bounded by the hood is designed to rest against the machine in a form-locked manner. '634, in a similar apparatus, teaches providing hooks 29 to latch a dust container housing to a tool, so that an end wall bounded by the tool is designed to rest against the machine in a form-locked manner. It would have been obvious to one of ordinary skill to have provided '123 with the hooks and end wall as taught by '634, figure 3, to allow the container and tool to be integral, see column 4, lines 31-67.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other similar devices are cited of interest.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurina Rachuba whose telephone number is 571 272 4493. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571 272 4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Rachuba/  
Primary Examiner  
Art Unit 3723